Petition

Office - Supreme Court, U.S.
FILED
MAY 3 1982
STEVAS,

81-2047

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

* * *

BOB BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS FOR THE STATE OF TEXAS, WARREN G. HARDING, TREASURER OF THE STATE OF TEXAS, EAST TEXAS STATE UNIVERSITY, JAMES GUDGER, DELMAR BROWN AND THE STATE OF TEXAS

Petitioners

V.

FREDERIC J. BRIGGS AND JAMES W. BRIGGS

Respondents

* * *

PETITION FOR WRIT OF CERTIORARI

* * *

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER
First Assistant Attorney General

RICHARD E. GRAY, III
Executive Assistant
Attorney General

PAUL R. GAVIA
Chief, State and County Affairs

LONNY F. ZWIENER
Assistant Attorney General

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3131

Attorneys For Petitioners

QUESTION PRESENTED

Whether the decision of the Supreme Court of Texas and the Court of Appeals of Texas, in applying the Full Faith and Credit Clause of the United States Constitution to a Florida judgment, is in conflict with the decisions of this Court interpreting the Due Process Clause of the Fourteenth Amendment to the Constitution as it applies to non-resident defendants in a foreign forum —where the contacts of the non-resident Texas defendants were essentially non-existant and all the operative facts of the case occurred in Texas.

PARTIES TO THE PROCEEDING

The Petitioners are:

Bob Bullock
Warren G. Harding
East Texas State Univeristy
James Gudger
Delmar Brown
The State of Texas

The Respondents are:

Frederic J. Briggs
James W. Briggs

SUBJECT INDEX

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

SUBJECT INDEX iii

INDEX OF AUTHORITIES iv

JUDGMENTS AND OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED ... 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 6

CONCLUSION 13

CERTIFICATE OF SERVICE 15

INDEX OF AUTHORITIES

CASES	PAGE
Durfee v. Duke, 375 U.S. 106 (1963)	6
Hanson v. Denckla, 357 U.S. 235 (1958)	7,8,12
International Shoe Co. v. State of Washington, 326 U.S. 310 (1945)	6,7,12
Kulko v. Superior Court of California, et al. 436 U.S. 84 (1978)	7
Rusk v. Savchuk, 444U.S.320, (1980)	6,11
Shaffer v. Heitner, 433 U.S. 186 (1977)	7,12
World-Wide Volkswagen Corporation v. Woodson, 444 U.S. 286, (1980)	6,7,9,12
STATUTES	
28 U.S.C. §1257(3)	2
CONSTITUTIONAL PROVISIONS	
Full Faith and Credit Clause, Section I, Article IV, U.S. Constitution	3
Due Process Clause of the Fourteenth Amendment to the U.S. Constitution	3,7,9

No. _____

* * *

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1981

* * *

BOB BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS FOR THE STATE OF TEXAS, WARREN G. HARDING, TREASURER OF THE STATE OF TEXAS, EAST TEXAS STATE UNIVERSITY, JAMES GUDGER, DELMAR BROWN AND THE STATE OF TEXAS
Petitioners

V.

FREDERIC J. BRIGGS AND JAMES W. BRIGGS
Respondents

* * *

PETITION FOR WRIT OF CERTIORARI

* * *

TO THE UNITED STATES SUPREME COURT:

The Petitioners, Bob Bullock, Comptroller of Public Accounts for the State of Texas, Warren G. Harding, Treasurer of the State of Texas, East Texas State University, James Gudger, Delmar Brown and the State of Texas, respectfully pray that a writ of certiorari issue to review the judgment of the Supreme Court of Texas entered on February 3, 1982.

JUDGMENTS AND OPINIONS BELOW

The judgment of the Supreme Court of Texas was entered on February 3, 1982, as follows:

> "...Austin, Texas February 3, 1982 You are hereby notified that the Application for Writ of Error in this case of *Bullock v. Briggs, et al.* No. C-918 was this day refused. No reversible error."

No written opinion was entered and the judgment is unreported although reference is made to the action of the Supreme Court of Texas in the Texas Writs of Error Tables. A copy of the judgment is included in the Appendix to this Petition.

The opinion and judgment of the Court of Appeals for the Third Supreme Judicial District of Texas, reviewed by the Texas Supreme Court and found to contain "no reversible error", was entered on November 4, 1981, rehearing denied Nov. 18, 1981, and is reported at 623 S.W.2d 508. A copy of such opinion is included in the Appendix.

The judgment of the 147th Judicial District Court of Travis County, Texas was entered on Feb. 5, 1981 and is not reported. A copy of this judgment is found in the Appendix hereto.

JURISDICTION

The judgment of the Supreme Court of Texas was entered on February 3, 1982. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3). A substantial federal question was clearly raised in the Texas courts and their decision just as clearly rested on these federal grounds.

CONSTITUTIONAL PROVISIONS INVOLVED

This case represents a conflict between two constitutional provisions of the United States Constitution: The full Faith and Credit Clause of Section 1, Article IV, which reads:

> "Full Faith and Credit shall be given in each State to the public acts, records, and judicial proceedings of every other State";

and the Due Process Clause of the Fourteenth Amendment which provides:

> "...nor shall any State deprive any person of life, liberty, or property, without due process of law..."

STATEMENT OF THE CASE

The facts underlying this case do not appear to be disputed between the parties.[1] The circumstances which give rise to the issues presented by this application began in 1969 when Frederic J. Briggs and his father James W. Briggs, both residents of Dade County, Florida, entered into an athletic scholarship contract with East Texas State University, located at Commerce, Texas.

In November, 1970, while attending East Texas State University, Frederic J. Briggs was injured in a basketball scrimmage. The injury was diagnosed as a sprain of

---

1. There is one dispute which Petitioners have with a statement made in the decision of the Court of Civil Appeals. The Court infers at page 3 of its Opinion that a default judgment was not taken in Florida against the Texas defendants. This inference is apparently incorrect, since an order of the Florida Court recites, "A default judgement against each of the defendants is hereby ordered".

the ankle and x-rays were taken which showed no broken bones. While on Christmas vacation in Florida, James W. Briggs telephoned James Gudger and Delmar Brown, the coach and trainer of the University basketball team respectively, and informed them that his son had seen a doctor in Miami, Florida who proposed surgery. The coach and trainer opposed such action and made it clear that they wanted Frederic Briggs to return to Commerce where Dr. Cotton, the orthopedic surgeon for the Dallas Cowboys, would examine Frederic Briggs. The policy of the University with respect to athletic injuries was explained to the father. The policy, which was given to each student athlete, and which was read to the father of Frederic Briggs, provided:

Pertaining to Treatment of Athletic Injuries:

> "Under no circumstances will an athlete be permitted to purchase medicines or medical supplies without the permission of the Head Trainer. If this happens the athlete will be responsible for the bill himself. If an athlete goes to a physician on his own accord, without first getting the approval of and making necessary arrangements with the Head Trainer, the athletic department will not assume the financial responsibility. It is imperative that any and all treatment of sickness or injury, related to basketball activity, must be approved by the head Trainer prior to his first contact and treatment by a physician."

Despite the fact that both of the Briggs, father and son, were aware of the policy, Frederic Briggs again saw the doctor in Miami and was operated on shortly thereafter.

On or about July 23, 1971, the Briggs' filed suit in Florida in the District Court of Dade County and asked for damages against the University, the coach, and the

trainer based on the injury to Frederic Briggs' leg.

The suit was apparently filed because of an awareness that Coach Gudger would be in Dade County where he was a coach for the teams participating in the Pan American Games. The coach was not in Florida with the University basketball team or on any other official University business at this time. On the same day the suit was filed, personal service was made upon Coach Gudger in his individual capacity and as an agent of the University. A citation was also given Gudger with respect to Delmar Brown, a citation which the Briggs' Florida attorneys admitted was insufficient.

The Attorney General of Texas appeared in Florida on behalf of the University and Coach Gudger in order to contest the jurisdiction. Insufficient service was also raised.

On April 9, 1975, the Florida court overruled the Defendants' claim of lack of jurisdiction and insufficient service and the assertion that there were no minimal contacts between the acts in Texas and Florida, the court further ordering the Defendants to answer or be defaulted. Later, the judge defaulted all defendants and ordered the trial to go forward only on the damage issue. The jury awarded $144,100 to the son and $6,100 to the father. The Court entered this verdict against the State of Texas as well as the three named defendants.

The Respondents herein, the Briggs, father and son, brought suit in the 147th Judicial District Court of Travis County, Texas, to enforce a judgment obtained against Petitioners, the State of Texas, East Texas University, James Gudger, and Delmar Brown in the courts of the State of Florida. The Comptroller and the Treasurer of the State of Texas were joined so as to have parties who could cause the payment of any judgment recovered. Motions for summary judgment were filed

by both plaintiffs and defendants, and judgment was entered against the State of Texas, East Texas University, James Gudger and Delmar Brown, the court further holding that any judgment against defendants, Bob Bullock and Warren G. Harding, would be premature inasmuch as it had not been shown that such defendants "would not give proper respect to the judgment rendered."

The State parties appealed the adverse judgment to the Court of Appeals Third Supreme Judicial District of Texas which Court affirmed the judgment of the district court.

Review was next sought in the Supreme Court of Texas which denied plenary review of the decision of the Court of Appeals, finding "No reversible error."

This Petition for Writ of Certiorari is requested to review the decision of the Supreme Court of Texas and the underlying decision of the Court of Civil Appeals which was founded to have no reversible error.

REASONS FOR GRANTING THE WRIT

THE DECISION OF THE SUPREME COURT OF TEXAS GROUNDED ON THE DECISION OF THE TEXAS COURT OF APPEALS CONFLICTS WITH THE DECISIONS OF THIS COURT IN *INTERNATIONAL SHOE CO. V. STATE OF WASHINGTON,* 362 U.S. 310 (1945) AND ITS PROGENY, THE LATEST OF WHICH IS *WORLD-WIDE VOLKSWAGEN CORPORATION V. WOODSON,* 444 U.S. 286, (1980).

The decision of the Texas Supreme Court and the Texas Court of Appeals was based in part upon this Court's opinion in *Durfee v. Duke,* 375 U.S. 106 (1963), which held that the full faith and credit clause should be

applied to a foreign judgment when the question of jurisdiction has been "fully and fairly litigated and finally decided in the Court which rendered the original judgment" 375 U.S. at 111. In so holding, the Texas Courts totally ignored the injunction of *Durfee* that the quoted rule would not apply where a default judgment is entered by the forum court since in the subject case default judgments were entered as to liability.

However, the main vice presented by this case is that the Texas courts never properly dealt with the due process clause of the Fourteenth Amendment to the United States Constitution and its relation to the full faith and credit clause, ignoring (or overruling) the holdings of *International Shoe Co. v. State of Washington*, 326 U.S. 310 (1945), and its issue, decisions which require that there be minimum contacts in the forum state to satisfy due process standards so as to confer jurisdiction over a non-resident defendant.

Petitioners assert that the proper resolution of this case is governed by *International Shoe Co. v. State of Washington, supra; Hanson v. Denckla*, 357 U.S. 235 (1958); *Shaffer v. Heitner*, 433 U.S. 186 (1977); *Kulko v. Superior Court of California, et al.*, 436 U.S. 84 (1978); *Rush v. Savchuk*, 444 U.S. 320 (1980); and *World-Wide Volkswagen Corporation v. Woodson*, 444 U.S. 286 (1980). Petitioners argue that the quoted cases require "minimum contacts" between the defendants and the forum state (here, Florida) to confer jurisdiction over the non-resident defendants (all from Texas), and that there were insufficient contacts in this case.

In *International Shoe Co., supra*, this Court extended the traditional notions of jurisdiction beyond the boundaries of a state, but the Court further emphasized the heretofore hazy notion that the Due Process Clause of the Fourteenth Amendment to the United States Con-

stitution must be satisfied before a state can exercise in personam jurisdiction over a non-resident defendant. The rule as announced required that there be some contacts ("minimum contacts", 326 U.S. at 316) between the forum state and the non-resident defendant so to confer jurisdiction to enter a binding judgment in personam against the non-resident. This Court observed (326 U.S. at 319) that:

> "Whether due process is satisfied must depend rather upon the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure. That clause does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations".

International Shoe Co. was followed and amplified by *Hanson v. Denckla, supra,* the Court observing at page 251 of the Opinion that

> "However minimal the burden of defending in a foreign tribunal, a defendant may not be called upon to do so unless he has had the 'minimal contacts' with that State that are a prerequisite to its exercise of power over him".

It is important to note that *International Shoe Co.* and *Hanson* require *both* notice of the proceeding pending *and* that there be minimum contacts between the non-resident defendants and the forum state. See *International Shoe Co.,* 326 U.S. at 320, and *Hanson v. Denckla,* 357 U.S. at 245, with respect to the notice requirement.

In the present case, Petitioners do not urge that there was insufficient notice since one defendant was served while temporarily in Florida and the Texas Attorney

General's Office appeared to contest jurisdiction. Rather, the Petitioners assert that there were insufficient contacts between them and the State of Florida.

Possibly, the most definitive case decided by this Court (on the same day as *Rusk v. Savchuk)* is *International Volkswagen Corporation v. Woodson, supra.* That decision strongly reaffirmed the principle that Due Process must be satisfied or a judgment is "void", and that "minimum contacts" must be present to satisfy due process. This case holds:

> "The Due Process Clause of the Fourteenth Amendment limits the power of a state court to render a *valid personal judgment* against a non-resident defendant."
>
> "A judgment rendered in violation of due process is *void in the rendering State and is not* entitled to full faith and credit elsewhere."
>
> "Due process requires that the defendant be given adequate notice of the suit ... In the present case, it is not contended that notice was inadequate; the only question is whether these particular petitioners were *subject to the jurisdiction* of the Oklahoma courts."
>
> "As has long been settled, and as we reaffirm today, a state court may exercise personal jurisdiction over a non-resident defendant only so long as there exist 'minimum contacts' between the defendant and the forum State. The concept of minimum contacts, in turn, can be seen to perform two related, but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient forum. And it *acts to ensure that the states through their courts, do not reach out*

beyond the limits imposed on them by their status as coequal sovereigns in a federal system."

"The protection against inconvenient litigation is typically described in terms of 'reasonableness' or 'fairness'. We have said that the defendant's contacts with the forum state must be such that maintenance of the suit 'does not offend traditional notions of fair play and substantial justice."

"Thus, the Due Process Clause 'does not contemplate that a state may make binding a judgment in personam against an individual or corporate defendant with which the state has no contacts, ties, or relations.' Even if the defendant would suffer minimal or no inconvenience from being forced to litigate before the tribunals of another state; even if the forum state has a strong interest in applying its law to the controversy; even if the forum state is the most convenient location for litigation, *the Due Process Clause, acting as an instrument if interstate federalism, may sometimes act to divest the State of its power to render a valid judgment.*"

(100 S.Ct. at 564-565, emphasis supplied)

While the decisions speak to a judgment in personam or "valid personal judgment", thus suggesting an in personam jurisdiction, the cases seem to stand for the proposition that there can be no subject matter jurisdiction absent minimum contacts—no subject matter jurisdiction to enter an in personam or personal judgment. The language from *World-Wide Volkswagen*, such as, the "judgment...is void" and the State is "divest(ed)" of the power to render a valid judgment,

suggests a kind of subject matter jurisdiction.

In the case now before the Court, the Briggs, the Respondents, were residents of the State of Florida. The University was located in Texas, and the Respondents executed an athletic scholarship contract under which Frederic Briggs would play basketball at the University. A letter or letters were transmitted and some calls were made between the University coach and trainer and the Briggs—from Commerce, Texas to Florida. One of the Petitioners, Coach Gudger, was temporarily in Florida as a coach for the Pan American games and was personally served.

These are the only Florida contacts, while on the other side of the ledger are these facts:

1) The Petitioners were all residents of Texas.

2) The contract involved was to be performed in Texas.

3) The injury in a basketball scrimmage, which was the subject of the Florida suit, occurred in Texas.

The Florida contacts simply do not give rise to the jurisdiction and power of the Florida courts to enter a valid in personam judgment against the Texas defendants.

The circumstance that the Florida plaintiffs lived in Florida is not in any way significant inasmuch as consideration of a plaintiff's contacts with the forum has been rejected by the U.S. Supreme Court in evaluating a violation of a defendant's due process rights. *Rush v. Savchuk, supra.*

The execution of a contract between Florida residents and Texas residents has no viability in the maintaining

of a Florida lawsuit since the contract was not to be performed in Florida and no business was to be performed in Florida. *Hanson v. Denckla, supra,* 357 U.S. at 253; *Shaffer v. Heitner,* 433 U.S. at 216.

The correspondence and telephone calls between Florida and Texas do not create sufficient contacts to satisfy due process requirements since again there was no intent by the Texas parties to conduct activities in Florida.

The temporary presence of Coach Gudger in Florida likewise is not a minimum contact which will support jurisdiction in the Florida courts. Before the advent of the due process inquiry into jurisdiction of state courts over non-residents, the coach's presence may have supported a judgment against the coach personally. However today, his temporary presence will provide insufficient contact to confer the power of the Florida courts to enter an in personam judgment against Coach Gudger or any of the other Defendants since "it does not demonstrate that ...(he)... purposefully avail(ed) ...(himself) of the privilege of conducting activities within the forum state, '*Hanson v. Denckla, supra,* at 253...,' in a way that would justify bringing...(him) before a...(Florida) tribunal.'" *Shaffer v. Heitner,* 433 U.S. 186, 216 (1977).

Nor does the appearance of an attorney to represent Petitioners in the Florida court erase the due process requirements for valid in personam jurisdiction. Notice and presence are only one requirement of due process. *World-Wide Volkswagen v. Woodson, supra; International Shoe Co. v. State of Washington, supra; Hanson v. Danckla, supra.* "Fair play and substantial justice" (*International Shoe Co.*) must also be present in the guise of minimum contacts, and the absence of these elements in this case render the Florida judgment void. *World-Wide Volkswagen v. Woodson, supra.*

Aside from the lack of minimum contacts, the record in this case is replete with the denial of fair play and substantial justice by the Florida court rendering judgment—notable instances being the denial of the University plea of sovereign immunity as "anachronistic, illogical and invalid," the entry of judgment against Delmar Brown where no valid service was effected (as conceded by Respondents' attorney in the Florida action) and the entry of default judgments as to liability.

The Florida judgment in this case is "void". There was no "power" in the Florida court to render a "valid personal judgment," and the Florida court simply could not make a "binding in personam" judgment which can be enforced by the courts of Texas.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

MARK WHITE
Attorney General of Texas

JOHN W. FAINTER, JR.
First Assistant Attorney General

RICHARD E. GRAY, III
Executive Assitant
Attorney General

PAUL R. GAVIA
Chief, State and County Affairs

LONNY F. ZWIENER
Assistant Attorney General
Bar No. 22299000

P.O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 475-3131

CERTIFICATE OF SERVICE

I, Lonny F. Zwiener, Assistant Attorney General of Texas, do hereby certify that three true and correct copies of the foregoing instrument has been served by depositing same in the United States mail, certified, return receipt requested, addressed to Mr. Robert J. Hearon, Jr., Granes, Dougherty, Hearn and Moody, 2300 Austin National Bank Tower, Austin, Texas 78701, Attorney for Respondents, on this the _____ day of _____, 1982.

_____

LONNY F. ZWIENER

Appendix

APPENDIX A

CLERK'S OFFICE - SUPREME COURT

* * *

Austin, Texas
February 3, 1982

You are hereby notified that the Application for Writ of Error in the case of Bullock v. Briggs, et al. was this day refused. No reversible error.

Garson R. Jackson, Clerk

APPENDIX B

**IN THE COURT OF APPEALS,
THIRD SUPREME JUDICIAL DISTRICT
OF TEXAS, AT AUSTIN**

* * *

No. 13, 465

BOB BULLOCK, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS, ET AL.,
Appellants

vs.

FREDERIC J. BRIGGS, ET AL.,
Appellees

* * *

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 147th JUDICIAL DISTRICT
NO. 295,488, HONORABLE PETE LOWRY,
JUDGE RESIDING**

* * *

The question presented in this appeal is whether the trial court erred in rendering summary judgment for appellees, James W. Briggs and Frederic Briggs, against appellants, the State of Texas, its agents and employees. Appellees sued in the Texas district court upon a judgment obtained against appellants in a Florida court of general jurisdiction. The judgment was rendered in a tort action based upon personal injuries. The Florida judgment was not attacked directly by appeal in that State.

Recognizing the constitutional rule[1] that the Texas district court was required to give full faith and credit to the Florida judgment, the parties on appeal each argue a separate corollary to the constitutional rule.

Appellants contend that void foreign judgments are not enforceable under Article IV, §1; that the Texas district court was required to examine the Florida proceedings to determine if the original judgment was void for lack of jurisdiction in the court that rendered it; and, that the record in the present case reveals just such a lack of jurisdiction because a Florida court could not exercise *in personam* jurisdiction over appellants without violating the constitutional guarantee of due process of law. This is so, appellants say, because the undisputed facts establish that they did not have minimum voluntary contact with Florida required to permit that State to exercise jurisdiction over them consistent with fair play and substantial justice. Moreover, it was not fair and reasonable in the circumstances to require them to come into Florida to defend the claim. International Shoe Co. v. State of Washington, 326 U.S. 310 (1945); Hanson v. Denckla, 357 U.S. 235 (1958); U-Anchor Advertising, Inc. v. Burt, 553 S.W.2d 760 (Tex. 1977).

In contrast, appellees would have us sustain the summary judgment of the Texas district court which, in effect, gave full faith and credit to the Florida judgment. They base their position upon the rule of jurisdictional

---

1. "Full Faith and Credit shall be given in each State to the ...judicial proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such...proceedings shall be proved, and the Effect thereof." US Const. Art. IV, § 1.

The Florida proceedings in the present case were properly authenticated, proved and admitted in the Texas proceedings in the manner provided in 28 USC § 1738.

finality set forth in Durfee v. Duke, 375 U.S. 106 (1963); that is, where the record of the original proceeding reflects that the jurisdictional issues were fully and fairly litigated by the parties, and determined in the original proceeding itself, the foreign court's final judgment necessarily incorporates its ruling on the jurisdictional issues and they may not be re-examined by a sister State under the rule of *res judicata*. *Durfee* involved issues of subject matter jurisdiction but we see not basis for distinguishing it from a case involoving *in personam* jurisdiction, as we have presented in this appeal. The rule of *Durfee* would not apply, of course, when default judgments are entered in the original proceeding.

When we examine the Florida proceedings, as part of the summary judgment "evidence" in the Texas suit, we find that appellants filed in the Florida suit a "Plea to the Jurisdiction" by which they raised only the matter of sovereign immunity to suit and perhaps an implied want of capacity in appellees to bring their suit, based upon the proposition that the Texas legislature had not given them consent to sue. Appellants characterize this as a plea of "subject matter jurisdiction." We need not, in view of our holding, determine whether sovereign immunity is a jurisdictional plea, in that the court is not empowered to entertain the suit, or whether it is merely a bar that the State may or may not interpose to the claim. *See* State v. Lain, 349 S.W.2d 579 (Tex. 1961). (In any event, the Florida court held the doctrine of sovereign immunity inapplicable to the suit under Florida law and no appeal was taken in Florida from that ruling.)

At the hearing on the appellants' "Plea to the Jurisdictiona." appellants *argued* against the court's jurisdiction on the basis of sovereign immunity *and the minimum contact requirement for in personam jurisdic-*

tion.[2] The Florida court treated the matter of minimum contacts as a matter necessary to be decided before he

---

2. We quote from part of the transcript of the hearing:

Appellant: "Your honor, the brief, I think, succinctly states the position of the State of Texas.

"We feel that, under even the minimal contacts theory of the case, that the proper forum for this cause of action is in Texas.

"The injury occurred in Texas. The misdiagnosis or maldiagnosis that is alleged of the injury occurred in Texas. So under both theories the minimum contacts are in Texas.

Appellees: "The contract was signed in Florida. Part of the advice, the misadvice that was given, was in Florida.

"He (a state employee) called again to Florida, after he (an appellee) was injured here, and told him to work it out, told him not to go to the doctor here but to go to the doctor there.

"The first time that I have been aware, and I do not accuse (appellants) of making it up, but this is the first time that I heard of the minimum contacts theory.

"What we have raised by the State of Texas in this case really is what they call a 'Plea to the Jurisdiction,' as I have always understood it, and I still think it is true, that what we are talking about is they have an absolute defense, sovereign immunity, period.

The Court: "Well, whatever it may be, as we relate to contacts and the rights to bring the cause of action here, may seem to be of evidentiary nature.

"I am wondering if there is anything in the file that reflects what the contacts are as relates to that or is it only your men's determination or suggestion at this time that the court rule on the question of sovereign immunity.

(footnote continued on following page)

ruled on the sovereign immunity claim. Appellants raised the question of *in personam* jurisdiction by brief and

---

(footnote continued from previous page)

> All right. When I rule, I want to be certain that you have what you want to test, and I do not want to make a ruling on my rights to make a decision based upon this contact, or in not having a contact, if in fact for your purposes that is not an issue to worry about at this time.
>
> "Do you know what I am saying?
>
> Appellees: "I think that is up (appellants).
>
> Appellants: "Of course, we have never answered on the merits. All we have ever filed in this suit is the plea to the jurisdiction.
>
> The Court: "I guess what I am getting at is do I have to go forth, and as far as to satisfy you men and to make a finding that there are the following contacts or lack thereof, and thereafter, and to get me to answer the question on sovereign immunity, I have to take the position that I do, in fact, have jurisdiction, ralative to the parties, do I not? Otherwise, we have solved nothing.
>
> Appellants: "If I followed the Court, what you are saying is you have to assume that you have jurisdiction of the parties, and again, I have not made an issue of it...
>
> The Court: "My point is this: I have to set forth in the order, the Court has jurisdiction, and based on that, either we find I do or do not, and the plea of sovereign immunity applies or does not, so as to frame the issue for your appeal. But it would seem kind of fool-hardy to make a preliminary finding that I have the jurisdiction if in fact you want to go back and attack that before you get to the sovereign immunity question."

While the record does not reflect that appellants responded to the court's implied invitation to file a motion raising the question of *in*

(footnote continued on following page)

argument under their claim of sovereign immunity, but did not do so by motion as the Florida rules of procedure required. Fla.R.Civ.P. 1.140.

The Florida court entered an order which recited that it had jurisdiction of the parties and the subject matter; that the plea of sovereign immunity was denied; and that the appellants were required to file answerw to appellees' complaint within 30 days. Appellants then filed an Original Answer in the cause which recited that they did so "without waiving their Plea in Abatement previously filed herein." The Original Answer pled only a general denial. Evidently, the reference to a "Plea in Abatement" was intended to be a reference to the "Plea to the Jurisdiction" filed by appellants; the record contains no "Plea in Abatement." Appellants' attorney appeared at trial and participated in it by cross-examining witnesses. We need not, therefore, determine whether the answer itself amounted to a general appearance.

Appellants contend that the Florida proceedings are void because that court had not jurisdiction over appellants; and the act of a party, such as participation in the trial, cannot confer jurisdiction on a court.

(footnote continued from previous page)

personam jurisdiction, instead of merely raising it by brief and argument, the foregoing dialogue is sufficient to show that appellants unquestionably availed themselves of the opportunity to raise both aspects of jurisdiction, subject matter and personal, in the Florida proceedings. They have had their day in court on the question of jurisdiction and by their own choice they submitted that question to the Florida court for adjudication. They may not now attack that adjudication collaterally. Coe v. Coe, 334 U.S. 378 (1948); Sherrer v. Sherrer, 334 U.S. 343 (1948). We see nothing unfair or unreasonable in the Florida proceedings.

Appellants' propostition ignores the fundamental difference between subject matter and *in personam* jurisdiction. The former exists when the nature of the case falls within a general category of cases the court is empowered, under applicable statutory and constitutional provisions, to adjudicate. The latter exists when the statutory procedures for bringing a party within the court's control are followed, and those procedures comport with due process of law; *or, it exists if a party appears voluntarily in the proceedings.* Shields v. Thomas, 59 U.S. 369 (1856); Durfee v. Duke, *supra;* 15 Tex.Jur.2d "Courts," § 49. Whereas subject matter jurisdiction is a fundamental stricture on the power of the court, and appellants' argument would be valid in that respect, *in personam* jurisdiction may be waived, as it was here, by a voluntary participation in the trial of the suit. Leroy v. Great Western United Corp., 443 U.S. 173 (1979). In that sense, appellants could, and did, confer jurisdiction upon the Forida court by their voluntary act. In our view, this is sufficient basis for affirming the summary judgment of the Texas district court.

It appears from the record, moreover, that the jurisdictional issues were fully and fairly litigated by the parties in the Florida proceedings. The district court in Texas was, therefore, required by Article IV, § 1 of the Constitution of the United States to give full faith and credit to the Florida proceedings, including the determination made therein that the Florida court had jurisdiction with respect both to the parties and the subject matter. Durfee v. Duke, *supra.*

No question is raised in this appeal as to whether enforcement of the Florida proceedings will contravene the public policy of this state with respect to the common law doctrine of sovereign immunity and the exception from that doctrine represented by the Texas Tort Claims act, Tex.Rev.Civ.Stat.Ann.art. 6252-19. *See* Magnolia v. Hunt, 320 U.S. 430 (1943); Nevada v. Hall,

440 U.S. 410 (1979). Rather, the sole point of error raised by appellants on appeal is whether they were denied due process of law by the Florida court's assertion of jurisdiction over them in the absence of the minimal voluntary contacts with Florida required to satisfy due process.

We hold that the Texas district court did not err in granting appellees summary judgment on their judgment debt.

John Powers, Justice

AFFRIMED
Filed: November 4, 1981

APPENDIX C

IN THE COURT OF APPEALS,
THIRD SUPREME JUDICIAL DISTRICT
OF TEXAS, AT AUSTIN

* * *

JUDGMENT RENDERED NOVEMBER 4, 1981

* * *

13,465—BOB BULOCK, COMPTROLLER OF PUBLIC ACCOUNTS OF THE STATE OF TEXAS, ET AL. V. FREDERIC J. BRIGGS, ET AL. APPEAL FROM 147TH DISTRICT COURT OF TRAVIS COUNTY AFFIRMED—Opinion by Justice Powers

THIS CAUSE came to be heard on the transcript of the record and same being inspected, because it is the opinion of the Court that there was no error in the trial court's judgment; IT IS THEREFORE considered, adjudged and ordered that the judgment of the trial court be and same is hereby in all things affirmed. It is FURTHER ordered that appellants, Bob Bullock, Comptroller of Public Accounts of the State of Texas; East Texas State University; Warren G. Harding, Treasurer of the State of Texas; The State of Texas; James Gudger, Coach for East Texas State University; Delmar Brown, Head Trainer for East Texas State University, pay all costs in this behalf expanded and that this decision be certified below for observance.

APPENDIX D

NO. 295,488

FREDERICK J. BRIGGS and JAMES W. BRIGGS,	§	IN THE DISTRICT COURT OF
Plaintiffs,	§	
VS.	§	
BOB BULLOCK, Comptroller of Public Accounts for the State of Texas; EAST TEXAS STATE UNIVERSITY: THE STATE OF TEXAS: JAMES GUDGER; and DELMAR BROWN,	§	TRAVIS COUNTY, TEXAS
Defendants.	§	147th Judicial District

JUDGMENT

BE IT REMEMBERED that on the 27th day of June, 1980, came on to be heard Plaintiffs' Motion for Summary Judgment against Defendants STATE OF TEXAS, EAST TEXAS STATE UNIVERSITY, JAMES GUDGER, DELMAR BROWN, BOB BULLOCK, and WARREN G. HARDING and Defendants' Motion for Summary Judgment, and Plaintiffs appeared by their counsel and Defendants appeared by their counsel and the Court having heard argument on the motions and considered the records, pleadings, affidavits, and briefs filed herein and being of the opinion that Plaintiffs are entitled to judgment against Defendants State of Texas, East Texas State University, James Gudger, and Delmar Brown, but being of the

opinin that relief against Defendants Bob Bullock and Warren G. Harding would be premature as it has not been shown that Defendants Bullock and Harding will not give proper respect to the judgment rendered herein;

It is hereby ORDERED, ADJUDGED AND DECREED that Plaintiff Frederic J. Briggs have judgment against the State of Texas, East Texas State University, James Gudger and Delmar Brown, jointly and severally, in the principal amount of One Hundred Thirty-Eight Thousand and No/100 Dollars ($138,000.00), together with interest thereon at the rate of eight percent (8%) per annum from March 9, 1978 to the date of this judgment, with interest at nine percent (9%) per annum on said principal and interest from the date of this judgment until paid; that Plaintiff James W. Briggs have judgment against the State of Texas, East Texas State University, James Gudger and Delmar Brown, jointly and severally, in the principal amount of Six Thousand One Hundred and No/100 Dollars ($6,100.00), together with interest thereon at the rate of eight percent (8%) per annum from March 9, 1978 to the date of this judgment, with interest at nine percent (9%) per annum on said principal and interest from the date of this judgment until paid; that Plaintiffs Frederic J. Briggs and James W. Briggs jointly have judgment against the State of Texas, East Texas State University, James Gudger and Delmar Brown, jointly and severally, in the principal amount of One Thousand Nine Hundred Ninety-Eight and 71/100 Dollars ($1,998.71). together with interest thereon at the rate of eight percent (8%) per annum from March 9, 1978 to the date of this judgment, with interest at the rate of nine percent (9%) per annum on said principal and interest from the date of this judgment until paid; that the relief sought against Defendants Bullock and Harding is denied for the reasons stated above; that all costs in this proceeding be taxed against the State of Texas, East Texas State University, James Gudger and Delmar

Brown, for which let execution issue; and that all relief not expressly granted herein is denied.

SIGNED THIS THE 5th day of February, 1981.

/s/ Pete Lowry

PETE LOWRY,
JUDGE PRESIDING

APPROVED AS TO FORM:

/s/ Lonny F. Zwiener

Lonny F. Zwiener
Assistant Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711

Attorneys for Defendants

GRAVES, DOUGHERTY,
HEARON & MOODY
2300 Austin National Bank Tower
P.O. Box 98
Austin, Texas 78767

By: Robert J. Hearon, Jr.

Robert J. Hearon, Jr.

Attorneys for Plaintiffs

Opposition

Office - Supreme Court, U.S.
FILED
JUN 1 1982
ALEXANDER L. STEVAS,
CLERK

NO. 81-2047

in the Supreme Court of the United States

October Term, 1981

BOB BULLOCK, Comptroller of Public Accounts for the State of Texas, WARREN G. HARDING, Treasurer of the State of Texas, EAST TEXAS STATE UNIVERSITY, JAMES GUDGER, DELMAR BROWN, and the STATE OF TEXAS,
Petitioners,

vs.

FREDERIC J. BRIGGS and JAMES W. BRIGGS,
Respondents.

RESPONSE TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF TEXAS

Guy B. Bailey, Jr.
Jesse C. Jones

Attorneys for Respondents
One Biscayne Tower, Suite 1820
Two South Biscayne Boulevard
Miami, Florida 33131
(305) 374-5505

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	3
ARGUMENT	4
CONCLUSION	9

TABLE OF AUTHORITIES

Page

American Surety Co. v. Baldwin,
287 U.S. 156 (1932) 4

Baldwin v. Iowa State Travelling Men's Assoc.,
283 U.S. 522 (1931) 5, 8

Durfee v. Duke,
375 U.S. 106 (1963) 7

Elkins v. West,
554 S.W. 2d 821 (Tex. Civ. App. 1977) 7

Kellogg v. Kellogg,
559 S.W. 2d 126 (Tex. Civ. App. 1977) 7

Layton v. Layton,
538 S.W. 2d 642 (Tex. Civ. App. 1976) 7

Sherrer v. Sherrer,
334 U.S. 343 (1948) 5, 6

Treinies v. Sunshine Mining Co.,
308 U.S. 66 (1939) 7

Other Authorities

Florida Rules of Appellate Procedure 9.130 2

Florida Ruies of Civil Procedure 1.140 1

STATEMENT OF THE CASE

Frederic J. Briggs and James W. Briggs (the "Briggs") sued the State of Texas, East Texas State University, and the University's basketball coach and trainer (the Petitioners here), in a court of general jurisdiction in Dade County, Florida. The Texas Attorney General, on behalf of the Petitioners, filed a "Plea to the Jurisdiction"—a Texas procedure unknown in Florida.[1] In this plea, the Petitioners urged a dismissal based on sovereign immunity. In briefs and oral arguments, however, they argued that the Florida court lacked personal jurisdiction.

The Florida trial court adjudicated that it had subject matter and personal jurisdiction, and rejected the plea of sovereign immunity. The Petitioners then answered with a general denial and a reservation of their plea to the jurisdiction.

Subsequently, the Petitioners failed to appear for a pretrial conference (of which they had notice), and the trial court therefore entered a default on liability and scheduled a jury trial on damages.

The Texas Attorney General appeared at and participated in the trial on damages. On the jury's verdict, the court entered judgment against the

---

[1]Florida procedure is similar to federal procedure. Under Rule 1.140, Fla.R.Civ.P., the defense of lack of personal jurisdiction may be raised by motion or by answer, and "no defense or objection is waived by being joined with other defenses or objections in a responsive pleading or motion." The defense of lack of personal jurisdiction is waived unless presented by motion or answer, but lack of subject matter jurisdiction may be raised at any time.

Petitioners in the total amount of $145,299.71. They did not appeal this judgment.[2]

The Briggs then filed suit in Texas to enforce their Florida judgment. The Texas trial court entered a summary final judgment in favor of the Briggs. The Petitioners appealed this judgment to the Texas court of appeals. That court affirmed, in the opinion reported at 623 S.W.2d 508, noting as follows:

> No question is raised in this appeal as to whether enforcement of the Florida proceedings will contravene the public policy of this State with respect to the common law doctrine of sovereign immunity and the exception from that doctrine represented by the Texas Tort Claims Act. . . . Rather, the sole point of error raised by appellants on appeal is whether they were denied due process of law by the Florida court's assertion of jurisdiction over them in the absence of the minimal voluntary contacts with Florida required to satisfy due process.

Finding "that the jurisdictional issues were fully and fairly litigated by the parties in the Florida proceedings," the court held that Texas was required by the United States Constitution to give full faith and credit to the Florida judgment.

The Petitioners then sought discretionary review in the Texas supreme court, which found "no reversible error."

---

[2]An order determining personal jurisdiction may be reviewed as a matter of right in the Florida District Court of Appeal, either by interlocutory appeal or by final appeal. Fla.R.App.P. 9.130.

SUMMARY OF ARGUMENT

The Petitioners here seek review of the decision of the Texas courts, which gave full faith and credit to a judgment entered in Florida. Petitioners admit that they had notice of and participated in the Florida proceeding. They admit that they participated in the trial. And, they admit that the Florida court adjudicated with finality that it had personal jurisdiction. But, the Petitioners nevertheless argue that their own courts, by affording full faith and credit to the Florida judgment, have somehow denied the State its federal guarantee of due process of law.

The Petitioners had every opportunity to challenge Florida's exercise of jurisdiction. Having not availed themselves of those opportunities, they cannot now collaterally attack the Florida judgment. The full faith and credit clause precludes further inquiry into Florida's jurisdiction. Had the Petitioners desired this Court's review of the sufficiency of their contacts with Florida, they were required to follow proper appellate procedures from the Florida judgment itself. The interests of federalism and of the finality of litigation foreclose the present Petition.

The Texas courts have not denied their State due process of law. They have simply followed the binding precedents of this Court and the clear dictates of reason. The Petition is frivolous, and should be denied.

ARGUMENT

The Petitioners' sole argument is that there were insufficient "minimum contacts" to permit Florida's exercise of *in personam* jurisdiction, rendering the judgment "void" and therefore not entitled to full faith and credit.

This argument is foreclosed by this Court's well-reasoned holdings that where a state court adjudicates that it has personal jurisdiction, in proceedings in which that question was in issue and the parties had full opportunity to litigate it, the resulting judgment is entitled to full faith and credit: the jurisdiction of the rendering court cannot be collaterally attacked in the courts of a sister state.

In *American Surety Co. v. Baldwin*, 287 U.S. 156, 166-167 (1932), the Court squarely held, in an opinion delivered by Mr. Justice Brandeis, that the full faith and credit clause precluded a federal court's inquiry into the validity of a state court judgment, where the state court had adjudicated (on a motion to set aside the judgment) that it had jurisdiction:

> Since the decision would formally constitute res judicata in the courts of the state; since it in fact satisfies the requirements of prior adjudication; and since the constitutional issue as to jurisdiction might have been presented to the state Supreme Court and reviewed here, the decision is a bar to the present suit insofar as it seeks to enjoin the enforcement of the judgment for want of jurisdiction.

In *Baldwin v. Iowa State Travelling Men's Assoc.*, 283 U.S. 522 (1931), the Court held that a federal district court in Iowa could not reconsider a federal district court in Missouri's decision on personal jurisdiction. While noting that it was not a question of full faith and credit, the Court stated:

> Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard, and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause.

283 U.S. at 525-526.

In *Sherrer v. Sherrer*, 334 U.S. 343 (1948), the Court again held that the full faith and credit clause forbids a state court from questioning a sister-state's court's adjudication of personal jurisdiction. A wife left her husband in Massachusetts and moved to Florida, where she filed a divorce action. The husband retained Florida counsel, who entered a general appearance and denial. The husband's counsel was present at the trial, although he did not cross-examine the wife's witnesses or introduce evidence in rebuttal. The Florida court entered a decree of divorce, finding that it had jurisdiction of the parties and the subject matter. The husband did not appeal. Subsequently, the husband challenged the

divorce decree in a Massachusetts state court, which held the Florida decree void. This Court reversed the Massachusetts Supreme Court's affirmance:

> It is clear that respondent was afforded his day in court with respect to every issue involved in the litigation, including the jurisdictional issue of petitioner's domicile. Under such circumstances, there is nothing in the concept of due process which demands that a defendant be afforded a second opportunity to litigate the existence of jurisdictional facts.
>
> * * *
>
> [T]he doctrine of res judicata must be applied to questions of jurisdiction in cases arising in state courts involving the application of the full faith and credit clause where, under the law of the state in which the original judgment was rendered, such adjudications are not susceptible to collateral attack.
>
> * * *
>
> If respondent failed to take advantage of the opportunities afforded him, the responsibility is his own. We do not believe that the dereliction of a defendant under such circumstances should be permitted to provide a basis for subsequent attack in the courts of a sister state on a decree valid in the state in which it was rendered.

334 U.S. at 348, 350, 352.

The Court reiterated this principle in *Durfee v. Duke*, 375 U.S. 106, 111 (1963):

> A judgment is entitled to full faith and credit – even as to questions of jurisdiction – when the second court's inquiry discloses those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.[3]

These decisions are directly and unequivocally contrary to the position Petitioners urge here.[4] The Petitioners participated in the Florida proceedings and had every opportunity to contest personal jurisdiction. They could have appealed the final judgment to the Florida District Court of Appeal and sought discretionary review in the Florida Supreme Court and in this Court. They chose not to do so.

---

[3] *See also* Treinies v. Sunshine Mining Co., 308 U.S. 66, 78 (1939) ("One trial of an issue is enough. The principles of res judicata apply to questions of jurisdiction as well as to other issues. . . ."). The decisions of the Texas state courts, on which the courts below also relied, are in complete accord. *See, e.g.*, Kellogg v. Kellogg, 559 S.W.2d 126 (Tex. Civ. App. 1977); Elkins v. West, 554 S.W.2d 821 (Tex. Civ. App. 1977); Layton v. Layton, 538 S.W.2d 642 (Tex. Civ. App. 1976).

[4] The Petitioners' only attempt to distinguish this case law is to point to the fact that the Florida court entered a default as to liability. The default, however, was entered when the State failed to appear at a pre-trial conference – after the State had argued its "plea to the jurisdiction," and answered the Complaint. The State then participated in the trial on damages, and failed to appeal the resulting judgment.

As the court stated in *Baldwin v. Iowa State*, 283 U.S. at 524, due process carries with it "no right to litigate the same question twice." The Petitioners could have argued the insufficiency of their contacts with Florida on appeal from the Florida judgment. They did not do so. They cannot now collaterally attack the jurisdiction of the Florida court.

The Petitioners' arguments are contrary to this Court's binding precedents and to the clear dictates of reason. The Petition is frivolous, and should be denied.

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

Guy B. Bailey, Jr.
Jesse C. Jones
Attorneys for Respondents
1820 One Biscayne Tower
Two South Biscayne Boulevard
Miami, Florida 33131
Telephone: (305) 374-5505

May 28, 1982